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January 17, 2007

BY ELECTRONIC FILING

The Honorable Sue L. Robinson
United States District Court
844 King Street
Wilmington, DE 19801

Re: Boston Scientific Corp. v. Conor Medsystems; C.A. No. 05-768 (SLR)

Dear Chief Judge Robinson:

In its January 11, 2007 letter (D.I. 66), BSC cited the 1990 and 1991 cases, *Ortho Pharm. Corp. v. Smith* and *Scripps Clinic and Research Found. v. Genentech, Inc.* We are writing to bring to Your Honor's attention the later case, *Elan Pharm. Research Corp. v. Employers Ins. Of Wausau*, 144 F. 3d 1372, 1379-80 (11th Cir. 1998), where the Eleventh Circuit concluded that, although the earlier *Ortho* and *Scripps* cases suggested that "the subsequent dissemination of clinical studies and information developed for the purpose of obtaining FDA approval for a drug or medical device deprived a defendant of the protections of section 271(e)(1) and therefore gave rise to an action under section 271(a)," the Federal Circuit had rejected that theory in *Telectronics Pacing Sys., Inc. v. Ventritex, Inc.*, 982 F.2d 1520 (Fed. Cir. 1992).

Respectfully,

/s/ Jack B. Blumenfeld

Jack B. Blumenfeld (#1014)

JBB/ycs

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cc: Peter T. Dalleo, Clerk (By Hand)
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